COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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**To:** **Honorable Anthony J. Scirica, Chair, Standing Committee on Rules of Practice and Procedure**

**From:** **Paul V. Niemeyer, Chair, Advisory Committee on the Federal Rules of Civil Procedure**

**Date:** **May 2000**

**Re:** **Report of the Civil Rules Advisory Committee**

*Introduction*

The Civil Rules Advisory Committee met on April 10 and 11, 2000, at the Administrative Office of the United States Courts in Washington, D.C. It voted to recommend adoption of rules amendments that were published for comment in August 1999, with some modifications in response to the public comments. Part I of this report details these recommendations * * *.

Part II describes the Advisory Committee recommendation to publish for comment three sets of amendments. The first proposes a new Rule 7.1 governing disclosure of information that supports a determination whether a judge is disqualified. This proposal is advanced for consideration with parallel proposals by other advisory committees. The second set proposes amendments to Civil Rules 54(d)(2) and 58. This proposal is advanced for consideration with parallel proposals to amend Appellate Rule 4(a). The final proposal would amend Rule 81(a)(2) to integrate better with the rules governing habeas corpus cases and § 2255 motions.

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## *II Action Items: Proposals for Publication*

Each of the three proposals to publish amendments for comment is the result of work coordinated with other advisory committees. The disqualification disclosure proposal involves several other committees. The proposal on entry of judgment involves the Appellate Rules Advisory Committee. The Rule 81(a)(2) proposal involves the Criminal Rules Committee.

### II A: Disqualification Disclosure

The question of financial disclosure has been raised by the Committee on Codes of Conduct and was delegated to the several advisory committees by the Standing Committee. The Appellate Rules have, in Rule 26.1, the only present national rule on disclosure. Most of the circuits also have local rules that supplement the requirements of Rule 26.1. Disclosure requirements in the district courts are established by practice or local rule. The local circuit and district rules differ substantially among themselves. Substantial concern has arisen from two well-publicized newspaper accounts of situations in which federal judges failed to recognize investment conflicts that should have led to recusal. It may be desirable to respond to these pressures by publishing for comment a uniform disclosure rule that would apply to civil and criminal proceedings in the district courts, and to all proceedings in the courts of appeals. The uniform rule may also provide the template for a Bankruptcy Rule, but there are special problems that most likely will require development of special provisions that distinguish the Bankruptcy Rule from the uniform rule.

Two central needs must be recognized. The first is to get information from the parties to all actions. The second is to bring this information home to each judge who acts in a case. Although a

national rule can direct that the clerk provide the information to each judge — and such a direction is included in draft Rule 7.1 — this problem is an internal administrative problem to be handled primarily within each court. The central focus of a national rule will be the need to get information from the parties. It is not entirely clear that even this subject should be addressed by a Rule of Appellate, Bankruptcy, Civil, or Criminal Procedure. The subject seems within the scope of the Enabling Act, however, and Appellate Rule 26.1 has already set an example.

If there is to be a national rule that requires some measure of uniform disclosure, the extent of the disclosure must be chosen. No one believes that a national rule can require disclosure of all the information that might be relevant to a recusal decision. Nor does anyone claim to know what reduced level of disclosure would reach the most common and important grounds for recusal. It is generally agreed that Appellate Rule 26.1 disclosure will cover a major fraction of the circumstances that actually call for disclosure, but no one can say whether the proportion is 60%, 90%, or some more reassuring number. Few have suggested that a national rule should require disclosure about the attorneys who appear in a case; the focus commonly is on parties, excluding even amici curiae. (An addition might be made in the criminal rules to require disclosure of any corporation that may benefit from a restitution award.) As to parties, the focus commonly is on financial information, not on personal information. Appellate Rule 26.1 narrows this focus still further, addressing only parties that are nongovernmental corporations, and requiring information only about "parent corporations and * * * any publicly held company that owns 10% or more of" the corporation's stock.

Appellate Rule 26.1 is about as narrow a financial disclosure rule as could be drafted. When a somewhat broader form of Rule 26.1

was adopted in 1989, the Committee Note recognized the rule represented "minimum disclosure requirements" and observed that a court of appeals could "require additional information * * * by local rule." Although many local circuit rules do require additional information, there is no common pattern. Some require only modest additional disclosures; some require a great deal of additional information. These rules, and local district rules, are described in the Federal Judicial Center materials that accompany the present drafts.

The Civil Rules Advisory Committee considered draft rules that embodied several different approaches to disclosure, along with many different draft Committee Note provisions. The discussion is summarized at pages 9 to 15 of the draft Minutes. Two major questions were emphasized. The first is whether the time has come to require more extensive disclosures than Appellate Rule 26.1 requires. The Committee on Codes of Conduct believes that the best approach is simply to adopt Appellate Rule 26.1 in the rules that govern the district courts. The Advisory Committee agreed that it would not be wise to attempt to enshrine more detailed requirements in the Rules of Appellate, Bankruptcy, Civil, or Criminal Procedure. But it also concluded that it is desirable to leave the way open for adoption of additional disclosure requirements by a procedure that is more flexible than the Rules Enabling Act procedure. Inspiration for additional disclosure requirements may arise from at least two sources. Many courts, both circuit and district, require disclosures that extend beyond Appellate Rule 26.1. Experience with these local requirements may support development of more detailed national requirements. A second source of support for more detailed rules may be the continuing development of judicial support software. As computer systems become ever more powerful, it may prove feasible to bring together more complicated bodies of information about individual judges and about those involved in litigation. Draft Rule 7.1 leaves the way open to take advantage of these possible developments by

authorizing adoption of a disclosure form by the Judicial Conference. There is no mandate that a form be developed. But there was strong support for the conclusion that if additional disclosures are to be required, the best procedure for developing the requirements lies in the Judicial Conference. The Judicial Conference can act with the support of the Codes of Conduct Committee and the Administrative Office, and can adjust any form that may be adopted with greater facility than the Enabling Act permits.

The second question was whether the national rules should be framed to preempt local rules. This question is made difficult by competing considerations. Preemption of local rules can be easily supported. There is no apparent reason to believe that there is any local variation in the circumstances that affect the desirable level of disclosure. If the proposed model is the best disclosure rule, national uniformity has important advantages. One advantage is adherence to the Enabling Act ideal that there be uniform federal procedures. A second advantage is that parties and law firms that regularly appear in different federal courts are spared the burden of learning local rules and generating the different sets of information required by different local rules. Continued recognition of local rules, however, also can be easily supported. The Appellate Rules Advisory Committee recognized the role of local circuit rules when it first drafted Appellate Rule 26.1 in a form that required greater disclosure than the more recently amended version of Rule 26.1. This recognition reflected the drafting history, which began with more detailed disclosure requirements but receded in the face of substantial opposition. Most of the circuits have in fact adopted local rules that require disclosures more detailed than Rule 26.1 requires. Some district courts, acting in the absence of any national rule, also have adopted local rules that require disclosures more detailed than Rule 26.1 disclosure. This experience suggests that the minimal requirements of Rule 26.1 may not embody the best long-range approach. The compromise

embodied in draft Rule 7.1 is to address local rules only in the Committee Note. The final paragraph of the Committee Note states that Rule 7.1 does not prohibit local rules unless the Judicial Conference adopts a disclosure form that preempts local rules.

Proposed Rule 7.1(c), which directs the clerk to deliver a copy of the Rule 7.1(a) disclosure to each judge acting in the action or proceeding, does not have a parallel in the drafts of Appellate Rule 26.1 and Criminal Rule 12.4. The Civil Rules Advisory Committee believes that there are justifications that distinguish the Civil Rules from the Appellate Rules and Criminal Rules on this matter. The experience of some committee members is that disclosure information does not always come promptly to the district judge. An express direction to the clerk will help ensure that the disclosure accomplishes the intended function. The other rules address different circumstances. Appellate Rule 26.1(b) requires that the disclosure be included in a party's principal brief, assuring that it will come to the attention of each judge who considers the appeal on the merits. The occasions for action by a circuit judge before the principal briefs are filed are not so frequent as to require a direction to the clerk. Relatively few criminal cases involve corporate parties, and not many involve likely corporate restitution recipients.

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE*

**Rule 7.1 Disclosure Statement**

(a) **Who Must File.**

(1) **Nongovernmental Corporate Party.** A nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that:

(A) identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation, and

(B) discloses any additional information that may be required by the Judicial Conference of the United States.

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* New matter is underlined; matter to be omitted is lined through.

(2) **Other Party.** Any other party to an action or proceeding in a district court must file two copies of a statement that discloses any information that may be required by the Judicial Conference of the United States.

(b) **Time for Filing; Supplemental Filing.** A party must:

(1) file the Rule 7.1(a) statement upon its first appearance, pleading, petition, motion, response, or other request addressed to the court, and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

(c) **Form Delivered to Judge.** The clerk must deliver a copy of the Rule 7.1(a) statement to each judge acting in the action or proceeding.

**Committee Note**

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing,

number of copies, and the like. The information required by Rule 7.1(a)(1) reflects the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

Although the disclosures required by Rule 7.1(a)(1) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a)(1).

Despite the difficulty of framing more detailed disclosure requirements, developing experience with divergent disclosure practices and with improving technology may provide the foundations for exacting additional requirements. The Judicial Conference, supported by the committees that work regularly with the Codes of Judicial Conduct and by the Administrative Office of the United States Courts, is in the best position to develop any additional requirements and to keep them adjusted to new information. Rule 7.1(a)(2)

authorizes adoption of additional disclosure requirements by the Judicial Conference, to be embodied in a uniform statement that applies in all courts.

Rule 7.1(a)(2) requires every party to file a disclosure statement if the Judicial Conference acts to adopt requirements that reach a party that is not a nongovernmental corporation. It cannot be predicted what information will be required, of what parties, if the Judicial Conference adopts additional requirements. The Judicial Conference may adopt requirements that apply only to some, not all parties. In that case, only the designated parties need file. Even if the requirements apply to all parties, it seems likely that many parties, and particularly individual parties, will not have any information that falls within the required categories. In that case, the Rule 7.1(a)(2) requirement is satisfied by filing a statement that indicates that there is nothing to disclose as to any of the required categories.

Rule 7.1 does not prohibit local rules that require disclosures in addition to those required by Rule 7.1 unless the Judicial Conference adopts requirements that preempt additional disclosures.

### II B: Rules 54 and 58: Entry of Judgment

The Civil Rules Advisory Committee became involved with the entry-of-judgment question at the January 2000 Standing Committee meeting. The Appellate Rules Advisory Committee raised for discussion the problems that arise from the interplay of Appellate Rule 4 with Civil Rule 58. Appellate Rule 4 sets appeal time from the entry of judgment. Civil Rule 58 requires that a judgment be set forth on a separate document. The combination of these two rules has created a problem because district courts frequently ignore the

separate document requirement. Failure to enter the final judgment on a separate document means that appeal time never starts to run. The Appellate Rules Advisory Committee is concerned that the judicial landscape is littered with many "time bombs" in the form of years-old judgments that at any time could explode into an appeal, shattering the victors' repose and potentially burdening the courts with further proceedings in disputes that have become stale if not petrified.

A satisfactory solution to this problem cannot be found in the Appellate Rules alone. The obvious strategy of decoupling Appellate Rule 4 from Civil Rule 58 creates real problems because the time for post-judgment motions in the district court would remain coupled to Rule 58. Civil Rules 50, 52, and 59 all require that motions be filed within 10 days after entry of judgment. The time for a motion to vacate under Civil Rule 60(b)(1), (2), or (3) also is geared to the time judgment is entered. If Appellate Rule 4 were to approach the problem in isolation, the result would be that appeal time could expire before the time had begun to run for motions for judgment as a matter of law, to amend findings of fact, for a new trial, or to alter or amend the judgment. Disposition of a post-appeal time motion could in turn lead to a timely appeal from denial or from an amended judgment.

Several approaches could be taken in joint consideration of these problems. One would begin with the definition of "judgment" in Civil Rule 54(a). The Civil Rules Advisory Committee put this approach aside with little discussion because the Rule 54(a) definition presents many horrid theoretical problems that in practice seem to have caused no real difficulty. A second approach would be to abandon the separate document requirement, which was added to the rules to provide a clear signal for the running of appeal time. The Civil Rules Advisory Committee resisted this approach in the belief that the

separate document requirement remains valuable. A clear starting point is desirable not only for appeal time but also for the unalterable (Civil Rule 6(b)) time limits for the several post-judgment motions that are geared to the entry of judgment. Adherence to the separate judgment requirement, moreover, is simple. These considerations are not overwhelming, however, and the Advisory Committee recommends that if proposed Rule 58 is published, comments be solicited on the question whether the separate document requirement should be abandoned. A third approach might be to abandon the "mandatory and jurisdictional" character of appeal time limits, a complex undertaking that need not be approached if a simpler solution can be found.

The resolution recommended for publication amends Civil Rule 58. Rule 58(a) retains the separate document requirement, but makes exceptions for orders disposing of any of the several motions that, under Appellate Rule 4, suspend appeal time. These exceptions respond to one of the problems explored by the Appellate Rules Advisory Committee. The courts of appeals have generated a confused body of discordant rulings on the need to use a separate document to set forth an order disposing of one of these motions. The exceptions are drafted in terms more general than the Appellate Rule 4 provisions for the sake of simplicity. Appellate Rule 4(a)(4)(A)(iii), for example, suspends appeal time on timely motion for attorney fees only if the district court acts under Civil Rule 58 to extend appeal time. Draft Rule 58(a)(1)(C) deletes the qualification in the belief that if district courts now overlook the separate document requirement with some frequency, it is too much to ask that a separate document be created for disposition of a motion for attorney fees if, but only if, appeal time has been extended.

The central feature for resolving the "time bomb" problem is Rule 58(b). As now, entry of judgment requires entry on the civil docket. If Rule 58(a) requires that the judgment be set forth on a separate document, the time of entry for purposes of Rules 50, 52, 54(d)(2)(B), 59, 60, and 62 occurs on one of two events: the judgment is set forth on a separate document and entered on the civil docket, or the judgment is entered on the civil docket and 60 days expire without setting the judgment forth on a separate document. The fuse that now can be ignited only by setting the judgment forth in a separate document is replaced by a relatively fast fuse that automatically starts to burn 60 days after judgment is entered in the civil docket. A party anxious to avoid this 60-day delay, moreover, is encouraged by draft Rule 58(d) to request entry on a separate document.

Draft Appellate Rule 4(a)(7) completes the solution by adopting draft Civil Rule 58 for appeal-time purposes.

A conforming change is proposed for Rule 54(d)(2)(C), deleting the separate document requirement. This proposal also includes a minor change that would conform the time requirement in Rule 54(d)(2)(B) to the requirement recently made uniform in Rules 50, 52, and 59 — the motion for attorney fees must be filed no later than 14 days after entry of judgment, not both filed and served.

**Rule 54. Judgments; Costs**

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**(d) Costs; Attorneys' Fees.**

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(2) ***Attorneys' Fees.***

**(A)** Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

**(B)** Unless otherwise provided by statute or order of the court, the motion must be filed ~~and served~~ no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement

with respect to fees to be paid for the services for which claim is made.

**(C)** On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a)~~, and a judgment shall be set forth in a separate document as provided in Rule 58~~.

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**Committee Note**

Subdivision (d)(2)(C) is amended to delete the requirement that judgment on a motion for attorney fees be set forth in a separate document. This change complements the amendment of Rule 58(a)(1), which deletes the separate document requirement for an order disposing of a motion for attorney fees under Rule 54. These changes are made to support amendment of Rule 4 of the Federal Rules of Appellate Procedure. It continues to be important that a district court make clear its meaning when it intends an order to be the final disposition of a motion for attorney fees.

The requirement in subdivision (d)(2)(B) that a motion for attorney fees be not only filed but also served no later than 14 days after entry of judgment is changed to require filing only, to establish a parallel with Rules 50, 52, and 59. Service continues to be required under Rule 5(a).

**Rule 58. Entry of Judgment**

~~Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a~~

~~decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.~~

**(a) Separate Document.**

(1) Every judgment and amended judgment must be set forth on a separate document, but a separate document is not required for an order disposing of a motion:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b);

(C) for attorney fees under Rule 54;

(D) for a new trial, or to alter or amend the judgment, under Rule 59; or

(E) for relief under Rule 60.

(2) Subject to Rule 54(b):

(A) the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(i) the jury returns a general verdict, or

(ii) the court awards only costs or a sum certain, or denies all relief;

(B) the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(i) the jury returns a special verdict or a general verdict accompanied by interrogatories, or

(ii) the court grants other relief not described in Rule 58(a)(2).

(b) **Time of Entry.** Judgment is entered for purposes of Rules 50, 52, 54(d)(2)(B), 59, 60, and 62:

(1) when it is entered in the civil docket under Rule 79(a), and

(2) if a separate document is required by Rule 58(a)(1), upon the earlier of these events:

(A) when it is set forth on a separate document, or

(B) when 60 days have run from entry on the civil docket under Rule 79(a).

(c) **Cost or Fee Awards.**

(1) Entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except as provided in Rule 58(c)(2).

(2) When a timely motion for attorney fees is made under Rule 54(d)(2) the court may act before a notice of appeal has been filed and has become effective to order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59.

(d) **Request for Entry.** A party may request that judgment be set forth on a separate document as required by Rule 58(a)(1).

**Committee Note**

Rule 58 has provided that a judgment is effective only when set forth on a separate document and entered as provided in Rule 79(a). This simple requirement has been ignored in many cases. The result of failure to enter judgment is that the time for making motions under Rules 50, 52, 54(d)(2)(B), 59, and some motions under Rule 60, never begins to run. The time to appeal under Appellate Rule 4(a) also does not begin to run. There have been few visible problems with respect to Rules 50, 52, 54(d)(2)(B), 59, or 60 motions, but there have been many and horridly confused problems under Appellate Rule 4(a). These amendments are designed to work in conjunction with Appellate Rule 4(a) to ensure that appeal time does not linger on indefinitely, and to maintain the integration of the time periods set for Rules 50, 52, 54(d)(2)(B), 59, and 60 with Appellate Rule 4(a).

Rule 58(a) preserves the core of the present separate document requirement, both for the initial judgment and for any amended judgment. No attempt is made to sort through the confusion that some courts have found in addressing the elements of a separate document. It is easy to prepare a separate document that recites the terms of the judgment without offering additional explanation or citation of authority. Forms 31 and 32 provide examples.

Rule 58(a) is amended, however, to address a problem that arises under Appellate Rule 4(a). Some courts treat such orders as those that deny a motion for new trial as a "judgment," so that appeal time does not start to run until the order is entered on a separate document. Without attempting to address the question whether such orders are appealable, and thus judgments as defined by Rule 54(a), the amendment provides that entry on a separate document is not required

for an order disposing of the motions listed in Appellate Rule 4(a). The enumeration of motions drawn from the Appellate Rule 4(a) list is generalized by omitting details that are important for appeal time purposes but that would unnecessarily complicate the separate document requirement. As one example, it is not required that any of the enumerated motions be timely. Many of the enumerated motions are frequently made before judgment is entered. The exemption of the order disposing of the motion does not excuse the obligation to set forth the judgment itself on a separate document.

Rule 58(b) discards the attempt to define the time when a judgment becomes "effective." Taken in conjunction with the Rule 54(a) definition of a judgment to include "any order from which an appeal lies," the former Rule 58 definition of effectiveness could cause strange difficulties in implementing pretrial orders that are appealable under interlocutory appeal provisions or under expansive theories of finality. Rule 58(b) replaces the definition of effectiveness with a new provision aimed directly at the time for making post-trial and post-judgment motions. If judgment is promptly set forth on a separate document, as should be done, the new provision will not change the effect of Rule 58. But in the cases in which court and clerk fail to comply with this simple requirement, the motion time periods set by Rules 50, 52, 54, 59, and 60 begin to run after expiration of 60 days from entry of the judgment on the civil docket as required by Rule 79(a).

A companion amendment of Appellate Rule 4(a)(7) integrates these changes with the time to appeal.

Rule 58(b) also defines entry of judgment for purposes of Rule 62. There is no reason to believe that the Rule 62(a) stay of

execution and enforcement has encountered any of the difficulties that have emerged with respect to appeal time. It seems better, however, to have a single time of entry for motions, appeal, and enforcement.

This Rule 58(b) amendment defines "time of entry" only for purposes of Rules 50, 52, 54, 59, 60, and 62. This limit reflects the problems that have arisen with respect to appeal time periods, and the belief that Rule 62 should be coordinated with Rules 50, 52, 59, and 60. In this form, the amendment does not resolve all of the perplexities that arise from the literal interplay of Rule 54(a) with Rule 58. In theory, the separate document requirement continues to apply, for example, to an interlocutory order that is appealable as a final decision under collateral-order doctrine. Appealability under collateral-order doctrine should not be complicated by failure to enter the order as a judgment on a separate document — there is little reason to force trial judges to speculate about the potential appealability of every order, and there is no means to ensure that the trial judge will always reach the same conclusion as the court of appeals. Appeal time should start to run when the collateral order is entered without regard to creation of a separate document and without awaiting expiration of the 60 days provided by Rule 58(b)(2). Drastic surgery on Rules 54(a) and 58 would be required to address this and related issues, however, and it is better to leave this conundrum to the pragmatic disregard that seems its present fate. The present amendments do not seem to make matters worse, apart from one false appearance. If a pretrial order is set forth on a separate document that meets the requirements of Rule 58(b), the time to move for reconsideration seems to begin to run, perhaps years before final judgment. And even if there is no separate document, the time to move for reconsideration seems to begin 60 days after entry on the civil docket. This apparent problem is resolved by Rule 54(b), which

expressly permits revision of all orders not made final under Rule 54(b) "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

New Rule 58(d) replaces the provision that attorneys shall not submit forms of judgment except on direction of the court. This provision was added to Rule 58 to avoid the delays that were frequently encountered by the former practice of directing the attorneys for the prevailing party to prepare a form of judgment, and also to avoid the occasionally inept drafting that resulted from attorney-prepared judgments. See *11 Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d, § 2786.* The express direction in Rule 58(a)(2) for prompt action by the clerk, and by the court if court action is required, addresses this concern. The new provision allowing any party to move for entry of judgment on a separate document will protect all needs for prompt commencement of the periods for motions, appeals, and execution or other enforcement.

**II C: Rule 81(a): Rules Governing Habeas Corpus**

**Rule 81. Applicability in General**

**(a) To What Proceedings Applicable.**

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**(2)** These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warranto, to the extent that the practice in such

proceedings is not set forth in statutes of the United States, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Proceedings, and has heretofore conformed to the practice in civil actions. ~~The writ of habeas corpus, or order to show cause, shall be directed to the person having custody of the person detained. It shall be returned within 3 days unless for good cause shown additional time is allowed which in cases brought under 28 U.S.C. § 2254 shall not exceed 40 days, and in all other cases shall not exceed 20 days.~~

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**Committee Note**

This amendment brings Rule 81(a)(2) into accord with the Rules governing § 2254 and § 2255 proceedings; those rules govern as well habeas corpus proceedings under § 2241. In its present form, Rule 81(a)(2) includes return-time provisions that are inconsistent with the provisions in the Rules Governing §§ 2254 and 2255. The inconsistency should be eliminated, and it is better that the time provisions continue to be set out in the other rules without duplication

in Rule 81. Rule 81 also directs that the writ be directed to the person having custody of the person detained. Similar directions exist in the § 2254 and § 2255 rules, providing additional detail for applicants subject to future custody. There is no need for partial duplication in Rule 81.

The provision that the Civil Rules apply to the extent that practice is not set forth in the § 2254 and § 2255 rules dovetails with the provisions in Rule 11 of the § 2254 Rules and Rule 12 of the § 2255 Rules.

**Changes Considered But Not Recommended**

In deliberating the amendments proposed for adoption, the Advisory Committee considered but rejected other changes that may deserve further consideration. It would help to have comments addressed not only to the changes proposed by the amendments set out above but also to at least the following matters:

*Rule 7.1*

The Committee on Codes of Conduct has expressed concerns that Rule 7.1 should define "parent corporation," and that guidance should be provided on how to obtain any forms that may be developed if the Judicial Conference should act to require disclosures in addition to those required by Rule 7.1.

Comment is requested on the question whether Rule 7.1 should attempt to define what is a "parent corporation." Appellate Rule 26.1 now requires disclosure of "all * * * parent corporations and * * * any publicly held company [to become "corporation"] that owns 10% or

more of the party's stock." Rule 26.1 does not define parent corporation. It is clear that a parent need not be publicly held, and that there may be more than one parent. The requirement to disclose parents, indeed, has meaning only as to a corporation that does not fall into the category of a publicly held corporation that owns 10% or more of a party's stock. There is no indication that this open-ended approach to defining a parent corporation has caused any difficulty in applying Rule 26.1. An attempt to create a more precise definition may encounter substantial difficulties, either by including too many firms that have only a remote relationship to the party or by excluding some firms that have a close and important relationship. It is tempting to focus on some measure of "actual control," but application of that abstract concept may prove too difficult for the workaday needs of prompt disclosure. Suggested definitions will be welcome.

Comment also is requested on a question that may never arise. The Judicial Conference may never adopt additional disclosure requirements. If it does require additional disclosures, it may provide a disclosure form that is readily available in the office of every district court clerk. In the not-so-far-distant future, all of these requirements may be available as part of a process of electronic filing. Nonetheless, some concern has been expressed that it may prove difficult for some litigants to learn how to comply with any requirements that the Judicial Conference may adopt. It would be helpful to have suggestions about practical means of making it easy for all litigants to comply with additional requirements.

*Rule 58*

The separate document requirement was added to Rule 58 to provide an unambiguous signal that appeal time has started to run.

Because the appeal times set by Appellate Rule 4 have long been treated as "mandatory and jurisdictional," an unambiguous signal helps to protect against inadvertent loss of any opportunity for appeal. In addition, the separate document requirement may at times provide reassurance that a potentially ambiguous action in fact is intended to be an appealable judgment. The Advisory Committee is concerned, however, by the evidence that suggests relatively common disregard of this seemingly simple requirement. It is possible that failure to honor the separate document requirement results not from casual inadvertence but from some functional constraint. It would be helpful to have comments on the reasons why separate judgment documents are not universally provided, particularly from the judges and court clerks who are directly familiar with the problem. It would also help to have these comments address the question whether the risk of understandable inadvertence in the crush of district-court business may be alleviated by proposed Rule 58(d), which encourages the parties to request entry on a separate document.